

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10144 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SAHDEV @ SHAILESH HARIBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10144 of 2002
MR PRAVIN GONDALIYA for Petitioner No. 1
MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/04/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has

challenged the legality and validity of the order of detention dated 01.02.2002 passed against him by the Commissioner of Police, Rajkot, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The petitioner has been branded as "immoral traffic offender" within the meaning of Section 2(g) of the PASA Act, on the ground that the activities of the detenu affect the "public order" and "public health".

2. The grounds of detention served to the petitioner- detenu reveal that the detenu was found involved in two difference offences and in one offence, he was enlarged on bail. On plain reading of the reasons assigned for recording subjective satisfaction, it is specifically mentioned that the bail application preferred by the present petitioner was rejected on merits and order passed by ld. JMFC rejecting bail application is also quoted in the grounds of detention. It is also mentioned that on the date of order of detention, the application for bail preferred by the present petitioner was pending and same was not decided. But on plain reading of the grounds for recording subjective satisfaction, they do not disclose any aspect whereby the detaining authority has reasonably concluded that the petitioner is likely to be released or enlarged on bail and thereafter he shall indulge into same type of activities. There is no positive finding given by the authority that he is likely to be enlarged on bail by the Sessions Court. Reference of moving of an application for bail by the detenu by itself is not sufficient to pass the order of detention unless it is reasonably mentioned by the authority that he is likely to get bail in near future in view of other facts available on record and the gravity of the offence. It seems that the detaining authority has considered the sensitive language used by the ld. Magistrate while rejecting the bail application for recording the subjective satisfaction for passing the order of detention.

3. Ld. AGP Mr. Patel has placed reliance on the decision of the Apex Court in the cases of Meena Jayendra Thakur v/s Union of India & Others, reported in 1999(8) SCC 177. However, the facts of the present case lead me to the conclusion that the ratio propounded in the aforesaid decision, on the contrary, would help the petitioner and not the other side. The other decision of

the Apex Court on which ld. AGP placed reliance is in the case of Amrutlal & Other v/s Union of India, reported in AIR 2000 SC 3675, which also deals with the similar point. The Court has considered the aspect "likelihood to be released on bail" and "likelihood of his moving an application for bail". On the date of detention, the petitioner was a person in judicial custody with one negative result i.e. rejection of his bail plea by the ld. Magistrate. So, the detaining authority ought to have applied its mind as to whether this is case where detention order is required to be passed or the same should be postponed till the date of pronouncement of the order on bail application pending with the concerned Sessions Court. In such case, even it is open for the detaining authority to record subjective satisfaction and suo motu collect certain facts by recording further statements and verification of statements of such unnamed witnesses and other aspect which sponsoring machinery may brought to the notice of the detaining authority.

4. The second point raised by by ld. counsel Mr. Gondaliya is that the detaining authority has considered the fact of passing of the orders of detention on earlier occasions, but the petitioner was not served with the copies of such orders or supporting documents. Mere offer to the detenu that he may ask for any relevant document may not meet with the requirements of law. Each document which is considered by the detaining authority for recording subjective satisfaction, should be supplied to the detenu along with the grounds of detention. The Court is satisfied that the subjective satisfaction recorded by the detaining authority is neither legal nor logical. It seems that some extraneous consideration has played role including the detention orders passed against the father and/or brother of the present detenu for which no documents were supplied along with the grounds of detention. In short, on both counts impugned order of detention requires to be quashed and set aside.

5. No other points are canvassed.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 1.9.2002 passed by the Commissioner of Police, Rajkot City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

02-04-2003 [C. K.BUCH, J]

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